

## **REMARKS**

In this paper, claim 40 has been amended. Page 1 of the specification has also been amended. Claims 23-42 are pending. Examination of the pending claims is requested.

### **Specification**

The first paragraph of the specification has been amended to identify the now-issued patent from the parent application.

### **112 Rejections**

Claims 40-42 were rejected under 35 U.S.C. 112, second paragraph. Claim 40 has been amended to restate the recitation that the method includes a step of measuring a bioanalyte concentration in a sample; this amendment addresses the rejection. Withdrawal of the rejection is requested.

### **Double Patenting**

Claims 23, 25, 26, 28 and 30-38 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 23 of co-pending application 10/033,506 in view of either Carter et al. (U.S. Patent No. 5,628,890) or Winarta et al. (U.S. Patent No. 6,287,451).

Claims 24, 27 and 39 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 23 of co-pending application 10/033,506 in view of Carter or Winarta, and further in view of Morris et al. U.S. Patent No. 4,714,874).

Applicants do not acquiesce to the properness of these double-patenting rejections. Applicants also note that these double-patenting rejections are provisional, for being based on a pending application and not having an allowed claim in this application. However, to facilitate prosecution and have quick allowance of this application, enclosed is a Terminal Disclaimer over pending application 10/033,506.

*Appln. No. 10/033,575*

*Amendment dated December 5, 2003*

*Response to Office Action of December 1, 2003*

In view of the above amendments, remarks, and attached Terminal Disclaimer, Applicants respectfully request a Notice of Allowance. If the Examiner believes a telephone conference would advance the prosecution of this application, the Examiner is invited to telephone the undersigned at the below-listed telephone number.

Respectfully submitted,

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Date:

*December 5  
2003*

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